

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-1925V

UNPUBLISHED

KATHLYN BIRCH,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: June 15, 2022

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

*Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for
Petitioner.*

Debra A. Filteau Begley, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On December 17, 2018, Kathlyn Birch filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine that was administered to her on October 6, 2017. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 19, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On June 10, 2022, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$47,500.00 in pain and suffering. Proffer at 1. In the Proffer, Respondent represented that Petitioner

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$47,500.00 (for pain and suffering) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

KATHLYN BIRCH,

*

*

Petitioner,

*

No. 18-1925V

Chief Special Master Corcoran

*

v.

*

*

SECRETARY OF HEALTH AND

*

HUMAN SERVICES,

*

*

Respondent.

*

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On November 10, 2021, respondent filed a Rule 4(c) Report, conceding that petitioner’s claim meets the Table criteria for a SIRVA injury. On November 19, 2021, the Court issued a Ruling on Entitlement finding petitioner entitled to compensation under the Vaccine Act.¹

I. Items of Compensation

Pain and Suffering

Respondent proffers that petitioner should be awarded **\$47,500.00** in pain and suffering. See 42 U.S.C. § 300aa-15(a)(4). The above amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that petitioner be awarded a lump sum payment of **\$47,500.00**, in the form of a check payable to petitioner. Petitioner agrees.

¹ During the pendency of this case, petitioner was married, and on June 9, 2022, the caption was amended to change her name from Kathlyn Haynes to Kathlyn Birch.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D’ALESSIO
Acting Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

/s/ DEBRA A. FILTEAU BEGLEY
DEBRA A. FILTEAU BEGLEY
Senior Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Phone: (202) 616-4181

Dated: June 10, 2022